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January 20, 2010

Bill McCollum, Esq.
Attorney General
Department of Legal Affairs
The Capitol, PL01
Tallahassee, Florida 32399-1050

Re: Request for Attorney General's Opinion by Sumter County, Florida

Dear Attorney General McCollum:

Question Presented: May a county use Tourist Development Tax dollars to fund the stocking of publicly accessible freshwater county lakes with native freshwater game fish, upon a proper legislative finding by the Board of County Commissioners that such an activity will promote tourism in the county?

Facts: There are numerous publicly accessible freshwater lakes in Sumter County. The largest is Lake Panasoffkee, a 4,462 acre lake, which is serviced by multiple public boat ramps and privately owned for-profit fish lodges which are open to the public. In a joint project performed by the Southwest Florida Water Management District and Sumter County, large portions of Lake Panasoffkee were recently dredged to remove organic material from the lake and adjacent canals to improve the overall health of the lake. Public access is also provided to Lake Miona, a 419 acre lake located in Sumter County, Lake Okahumpka, and several other smaller lakes.

This office has been tasked with determining whether tourist development tax dollars may be used to stock publicly accessible lakes in Sumter County with native freshwater game fish, such as largemouth bass. The stated purpose behind stocking the lakes would be to distinguish and promote Sumter County as a world class freshwater fishing destination for non-resident anglers, which would inure to the benefit of multiple county businesses, including lodges and hotels, marinas, restaurants, sporting goods stores, boat dealerships, marine repair shops, etc. Such stocking would be performed in conjunction with the Florida Fish and Wildlife Commission's Division of Freshwater Fisheries Management or under that agency's direct supervision, so that the manner, volume and frequency of the stocking would be scientifically sound and enhance the targeted lakes.

Memorandum of Law and Opinion of Counsel:

While there does not appear to be a decision directly on point, given the public nature of the water bodies targeted for game fish stocking and the intended enhancements to tourism and the local economy, such an expenditure is arguably within the spirit of Section 125.0104(5)(a)(2), Florida Statutes. The “main purpose” of the stocking would be to facilitate and enhance the legitimate promotion of Sumter County lakes as world class, publicly accessible freshwater fishing destinations.

Also, stocking is arguably consistent with the acceptable listed uses of Tourist Development Tax funds discussed in Section 125.0104(5)(a)(4), Florida Statutes:

Section 125.0104(5)(a)(4) states:

To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, **including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access** as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. (Emphasis supplied).

Finally, the enhancement of fisheries to improve fishing (and therefore county tourism) has been noted as an appropriate use of tourist development tax funds by your office. In Attorney General Opinion 97-48, your office considered whether Citrus County was authorized to use tourist development tax dollars to construct an artificial reef to provide diving and snorkeling opportunities in waters bordering the county. It was concluded in that opinion that “based upon the appropriate legislative finding by the governing body of the county that such a project promotes tourism, construction of an artificial reef in order to promote snorkeling and diving **or as a basis for improving fishing** in the coastal waters to attract tourists may be funded by tourist development tax revenues collected pursuant to section 125.0104, Florida Statutes.” (Emphasis supplied).

The quote language of AGO 97-48 seems to suggest that activities intended to improve the quality of publicly accessible fishing are appropriate expenditures of tourist development tax dollars. Moreover, stocking of native game fish species would seem to qualify as an enhancement of an inland lake, though not in the tangible, structural manner of an artificial reef.

However, as both the language of Section 125.0104(5)(a)(4), noted herein, and AGO 97-48 directly address the physical enhancement, preservation or cleanup of a natural body, it could be argued that stocking of native game fish is not consistent with a strict interpretation of that section of the statute and the opinion, as the activity does not specifically relate to the “physical preservation” of the lake.

Thus, Sumter County respectfully submits this request for an opinion in hopes of clarifying the answer to the Question Presented.

Sincerely,

A handwritten signature in black ink, appearing to read "Derrill McAteer", with a stylized flourish at the end.

Derrill McAteer
Hogan Law Firm
Sumter County Attorney